

Wage and Hour Division, Labor

§ 579.2

person charged and the gravity of the violation shall be considered. The amount of any penalty under section 216(e) of the FLSA, when finally determined, may be:

(i) Deducted from any sums owing by the United States to the person charged;

(ii) Recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(iii) Ordered by the court, in an action brought for a violation of section 215(a)(4) or a repeated or willful violation of section 215(a)(2) of the FLSA, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under section 216(e) of the FLSA shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 212 of the FLSA, sums collected as penalties pursuant to section 216(e) of the FLSA shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 202 of the Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof and for other purposes" (29 U.S.C. 9a). Civil penalties collected for violations of section 212 shall be deposited in the general fund of the Treasury.

(b) The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, section 31001(s)), requires that Federal agencies periodically adjust their civil money penalties for inflation according to a specified cost-of-

living formula. This law requires each agency to make an initial inflationary adjustment for all covered civil money penalties, and to make further inflationary adjustments at least once every four years thereafter. Any increase in the civil money penalty amount will apply only to violations that occur after the date the increase takes effect.

(c) This part explains our procedures for issuing a notice of civil penalty to an employer that has violated section 12 or section 13(c)(5) of the Act, or any regulation issued under those sections; describes the types of violations for which we may impose a penalty and the factors we will consider in assessing the amount of the penalty; outlines the procedure for a person charged with violations to file an exception to the determination that the violations occurred; and summarizes the methods we will follow for collecting and recovering the penalty.

[40 FR 25792, June 18, 1975, as amended at 56 FR 8679, Feb. 28, 1991; 66 FR 63503, Dec. 7, 2001; 69 FR 75405, Dec. 16, 2004; 75 FR 28460, May 20, 2010]

§ 579.2 Definitions.

As used in this part and part 580 of this chapter:

Act means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201, *et seq.*).

Administrative law judge means a person appointed as provided in 5 U.S.C. 3105 and subpart B of part 930 of title 5 of the CFR, and qualified to preside at hearings under 5 U.S.C. 554-557.

Administrator means the Administrator of the Wage and Hour Division, U.S. Department of Labor, and includes an authorized representative designated by the Administrator to perform any of the functions of the Administrator under this part and part 580 of this chapter.

Agency has the meaning given it by 5 U.S.C. 551.

Chief Administrative Law Judge means the Chief Administrative Law Judge, Office of Administrative Law Judges, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington, DC 20001-8002.

Department means the U.S. Department of Labor.

Person includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

Repeated violations has two components. An employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections shall be deemed to be *repeated* for purposes of this section:

(1) Where the employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or,

(2) Where a court or other tribunal has made a finding that an employer has previously violated section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

Secretary means the Secretary of Labor, U.S. Department of Labor, or an authorized representative of the Secretary.

Serious injury means:

(1) Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(2) Permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or,

(3) Permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

Solicitor of Labor means the Solicitor, U.S. Department of Labor, and includes attorneys designated by the Solicitor to perform functions of the Solicitor under this part and part 780 of this chapter.

Willful violations under this section has several components. An employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, shall be deemed to be *willful* for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful. In addition, for purposes of this section, an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful. For purposes of this section, an employer's conduct shall be deemed to be in reckless disregard of the requirements of the Act, among other situations, if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.

[75 FR 28461, May 20, 2010]

§ 579.3 Violations for which child labor civil money penalties may be assessed.

(a) *What constitutes the violation.* Each of the following constitutes a violation of the Act and/or the Secretary's regulations for which a penalty as provided by section 16(e) of the Act and this part may be imposed, unless employment of the minor or minors referred to is shown to come within a specific exemption or exception described in paragraph (c) of this section:

(1) Each shipment or delivery for shipment in commerce by a producer, manufacturer, or dealer of any goods produced in an establishment situated in the United States in or about which, within thirty days prior to the removal of such goods therefrom, there has been employed any minor as described in paragraph (b) of this section;

(2) Each employment by an employer of any minor as described in paragraph (b) of this section, for any period in commerce or in the production of goods